(30,982)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 331

CLARENCE A. ANDERSON

vs.

JAMES W. CLUME

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Original	Print
Certificate from the United States circuit court of appeals, ninth circuit	1	1
Statement of facts	1	1
Questions certified	3	2
Judges' signatures	3	2
Clerk's certificate	4	3

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 21, 1925

[fol. 1] **IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT**

No. 4370

CLARENCE A. ANDERSON, Appellant,

vs.

JAMES W. CLUNE, Appellee

Certificate of the United States Circuit Court of Appeals for the Ninth Circuit certifying certain questions or propositions of law to the Supreme Court of the United States under Section 239 of the Judicial Code

Before Ross, Hunt, and Rudkin, Circuit Judges

STATEMENT OF FACTS

This suit came to the Circuit Court of Appeals for the Ninth Circuit by appeal from the United States District Court for the Southern District of California, Southern Division, from a decree in favor of James W. Clune, plaintiff in the District Court, and against Clarence A. Anderson, defendant in the District Court. The suit is to have Anderson adjudged to be a trustee of certain lands for Clune. The complaint charged that A. K. Johnson, who was an honorably discharged soldier of the Civil War, in 1872 made a homestead entry for a certain tract of land described, containing approximately eighty acres under the homestead laws of the United States; that Johnson died in May, 1875, leaving a widow, who died on March 1, 1917, without disposing of her husband's additional homestead right; that Johnson also left four children, all of whom were over the age of [fol. 2] twenty-one years at the date of the death of the widow; that there was also a widow of a deceased son; that they sold and assigned unto one B. A. Mason the additional soldier's homestead right of the deceased soldier, their several assignments having been made, respectively, one October 22, 1922, one January 16, 1923, two January 19, 1917, one September 15, 1922; that the two who assigned on January 19, 1917, reassigned their rights on July 9, 1923. It is alleged that Mason thereafter sold and assigned the said additional homestead right to the extent of 20.49 acres to Clune, plaintiff in this suit, who, in turn in August, 1922, by virtue of the said assigned soldier's homestead right, filed upon and entered a certain described tract of public lands in the United States Land Office at Independence, California; that the filing and entry of Clune were held for rejection in the Land Office and were finally rejected by the General Land Office on November 14, 1923, on the ground that the assignment of the soldier's additional homestead right had not been made by the soldier or his widow or his heirs prior to the administrative

ruling of the Department of the Interior February 15, 1917, (46 L. D. 32) and rulings and decisions of the Land Office, which construed sections 2306 and 2307 of the Revised Statutes as limiting a soldier's additional homestead right to the exercise thereof (1) by the soldier himself entering the land, or indirectly by conveying his right to entry to an assignee during his lifetime; (2) by the widow while her status as widow of the soldier continued; (3) in the absence of appropriation by the soldier or his widow, then by the minor orphan children during their minority acting through their guardian. It is further alleged that about October 27, 1923, defendant Anderson filed upon said 20.49 acres under an assignment of the additional homestead right of one G. M. Dunn, a former soldier of the United States; that Anderson's filing and application were allowed in 1924, [fol. 3] and that final certificate and patent for said tract have been issued to him by the authorities of the United States; that Anderson filed on the tract with full knowledge that Clune had made entry thereof and was claiming the land under his prior entry. The complaint also alleged that the decisions of the courts of the United States and of the Department of the Interior for many years were that the additional homestead rights to enter lands under sections 2306 and 2307 of the Revised Statutes of the United States are property and assignable and inheritable and have become vested in the estates of the soldier claimants, and have established a rule of property, and that the administrative ruling of February 15, 1917, (above cited) of the Department of the Interior is in violation of the Fifth Amendment of the Constitution of the United States.

Defendant Anderson moved the District Court for a dismissal of the complaint for the reason that it did not state facts sufficient to constitute a cause of action in favor of plaintiff and against the defendant. The motion was denied; defendant failed to answer, and decree, holding Anderson to be a trustee for Clune for the 20.49 acres referred to, was entered.

Questions Certified

The questions of law concerning which the Circuit Court of Appeals for the Ninth Circuit desires instruction from the Supreme Court are:

1. Under the Revised Statutes of the United States, sections 2306 and 2307, is a soldier's additional homestead right limited to the exercise thereof by the soldier himself entering the land, or indirectly by transfer of his right to an assignee during his lifetime, and to his widow while her status as widow of the soldier continues, and in the absence of the appropriation by the soldier or his widow during their lives, then by his minor orphan children during their minority acting through a guardian?

(Signed) Erskine M. Ross, William H. Hunt, Frank H. Rudkin.

Clerk's Certificate

[fol. 4] (Endorsed:) Certificate certifying certain questions or propositions of law to the Supreme Court of the United States under Section 239 of the Judicial Code. Filed February 24, 1925.

F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.

A true copy.

Attest February 24, 1925.

F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk. (Seal of the United States Circuit Court of Appeals, Ninth Circuit.)